

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, DC 20554

**RECEIVED**

JUL 6 1999

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

CC Docket No. 98-141

In the Matter of	)
	)
Applications for Consent	)
to the Transfer of Control of Licenses and	)
Section 214 Authorizations from	)
	)
AMERITECH CORPORATION, to	)
Transferor	)
	)
SBC COMMUNICATIONS, INC.	)
Transferee	)

**MOTION FOR EXTENSION OF TIME**

Pursuant to Section 1.46 of the Commission's Rules, 47 C.F.R. 1.46, AT&T Corp., the Competitive Telecommunications Association, MCI WorldCom, Inc, Sprint Corporation and the Telecommunications Resellers Association respectfully move the Commission to extend from July 13, 1999 to July 27, 1999 the time for filing comments on the conditions proposed by SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech")(together, "Applicants") for their pending application to transfer control.<sup>1</sup>

This is an extraordinary proceeding. If permitted, Applicants' proposed merger will result in the creation of a single RBOC monopolizing three of the former

<sup>1</sup> Public Notice, CC Docket No. 98-141, DA 99-1305, released July 1, 1999 ("Notice"). Pursuant to Section 1.46 of the Commission's Rules, movants are orally notifying Commission staff

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seven RBOC regions, plus the former SNET monopoly, that will control a third of the nation's access lines and cover 40 percent of its population.<sup>2</sup> As Commission representatives had once noted, the proposed merger "raises significant issues with respect to potential public interest harms and questions about the claimed competitive and consumer benefits of the proposed combination."<sup>3</sup>

Purportedly to address these concerns, on or before April 1, 1999, Applicants entered into "long and detailed discussions with FCC staff." No other party was privy to or represented at these negotiations; status reports were not provided; and no advance drafts were circulated during the negotiation period.<sup>4</sup>

The results of those negotiations are contained in a filing made by Applicants and finally released to the public late on July 1, 1999. In a cover letter accompanying their filing of the proposed conditions, Applicants claim that their conditions "go well beyond the requirements of the 1996 Act" and "make their in-

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(footnote continued from previous page)

responsible for this proceeding, as well as representatives of Applicants and other parties hereto, of the filing of this Motion.

<sup>2</sup> Ameritech controls 20,079,749 switched access lines region-wide. Preliminary Statistics of Communications Common Carriers at 137-38 (1997); SBC controls 17,231,160 switched access lines in California alone. *Id.* at 141.

<sup>3</sup> Notice. See also Letter Chairman Kennard to R. Notebaert (Ameritech) and E. Whitacre, Jr. (SBC), April 1, 1999; Transcript of SBC-Ameritech Public Forum, May 6, 1999 at 16 ("the staff reviewing the application had tentatively concluded that this proposed license transfer, if not ameliorated by sufficient conditions, flunks the public interest test"); *id.* at 18-21.

<sup>4</sup> Incredibly, Applicants cite to the "extraordinary level of public involvement" as a basis for adopting the conditions. This characterization is belied by the facts cited above, and the complete absence of similarity between the conditions that have been released for comment and those proposed by other parties. Even if the such similarity existed at a high level – which it does not-- no party other than Applicants had any role in drafting actual language.

region markets the most open and competitive in the country.”<sup>5</sup> Further, Applicants state that the Commission’s staff has, without benefit of public comment, already “agreed” to the conditions, and “specifically indicated that they would satisfy the public interest concerns and lead them to support the merger.”<sup>6</sup>

These statements are as disturbing as they are extraordinary. Even a cursory inspection of the lengthy filing reveals that, far from exceeding the requirements of the 1996 Act, various provisions fall short of or even demonstrably conflict with the Act in significant ways. For example, as the Commission has previously and correctly recognized, Congress in the Act authorized (and expected) local competition through a variety of entry strategies – and did not favor or prefer any single method of entry. Indeed, the Section 251(c)(3) of the Act strictly forbids discrimination based on the strategy of new entrants, by (among others) requiring that incumbent LECs make unbundled elements available to “any” requesting carrier, “on rates, terms, and conditions that are just, reasonable, and *nondiscriminatory*,” and “in a manner that allows requesting carriers to *combine* such elements.”<sup>7</sup>

The proposed conditions violate these requirements in the most fundamental way by purporting to allow Applicants to provide unbundled elements on more favorable terms and conditions to carriers that choose to follow particular facilities-based

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<sup>5</sup> Letter from R. Hetke (Ameritech) and P. Mancini (SBC) to M. Salas (FCC), July 1, 1999, CC Docket No. 98-141.

<sup>6</sup> Id.

<sup>7</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, released August 8, 1996 (“Local Competition Order”), para. 12.

strategies, and thereby penalize other entrants. For example, the proposed conditions allow Applicants to grant special, non-cost based discounts on unbundled loops to competing carriers on the condition that such carriers do not use the loops in combination with Applicants' unbundled switching – contrary to the plain language of the Act. Moreover, the proposed conditions purport to allow the Applicants themselves to determine, on a state-by-state basis, caps on the number of lines that can be served by CLECs using UNE combinations, and to prohibit the use of such combinations to provide any service to business customers and all but POTS (and ISDN) to residential customers,<sup>8</sup> thus allowing the incumbents illegitimately to serve as “gatekeepers” of the competition the Act was supposed to bring. Finally, the proposed conditions are especially disturbing not only because they resolve particular issues in a manner that conflicts demonstrably with the Act, but because they were negotiated in secret between the Commission and the merging monopolies, while the same or similar issues are supposedly under consideration in other pending (and presumably open) Commission proceedings.<sup>9</sup>

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<sup>8</sup> Compare 47 U.S.C. 252(i) (requiring incumbent LECs to provide items in interconnection agreements to other all other requesting carriers).

<sup>9</sup> Perhaps the most obvious example is the Commission's proceeding initiated in response to the vacating of Commission Rule 319 to determine the UNEs that ILECs must make available, in which ILECs are calling for, but CLECs and others are justifiably opposing as impermissible under the Act, limits on the availability of UNEs similar to those apparently sanctioned here. Other Commission proceedings considering issues similar to those purportedly resolved by these proposed conditions include CC Docket No. 98-56, RM 9101 (Performance Measurements and reporting requirements for Operations Support Systems, Interconnection and Operator Services and Directory Assistance), and CC Docket No. 98-147 (Deployment of Wireline Services Offering Advanced Telecommunications Capability).

These are but a few of the most objectionable aspects of the proposed conditions, which consume over 100 single-spaced pages, and purport to address many complex and technical matters. Preparation of meaningful comments to evaluate the proposed conditions (and Applicants' assertions about them) will require careful and thorough review by persons with the necessary technical, marketing and legal background. Even if the general principles reflected in the proposed conditions appeared to address concerns about the merger, recent experience has demonstrated the importance of careful drafting to minimize the number and scope of ambiguities in the governing documents and ensure they reflect the regulators' intent.

CLECs can make a valuable contribution to this process by virtue of the experience they have gained in this regard during the course of negotiating, arbitrating and drafting interconnection agreements. Further, the Commission's experience with the conditions imposed in connection with the merger of Bell Atlantic and NYNEX, which have accomplished little except generate more seemingly interminable litigation over the meaning of many of the same terms used in the conditions proposed here, vividly confirms the importance of careful drafting and meaningful, detailed input from parties other than the Applicants.

The pleading cycle established by the Notice does not come close to providing sufficient time for review, analysis and preparation of comments. It allows interested parties a mere six business days, with a three-day holiday weekend sandwiched between, to perform these tasks. In contrast, Applicants have had at least ninety days to consider, draft, revise and finalize their conditions, and lobby the Commission staff to support not only a framework and principles, but also specific

implementation details and actual language. This process, it is said, has resulted in Staff's "agreement" to these conditions. If such an agreement has indeed already been secured, that only increases the burden on interested parties to perform a thorough analysis so that the Commission can determine for itself whether the proposed merger, especially subject to these conditions, is consistent with the public interest. Other parties cannot meaningfully contribute to this process without the extension of time sought herein.

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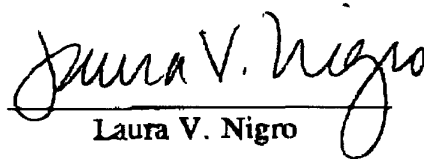
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**CERTIFICATE OF SERVICE**

I, Laura V. Nigro, do hereby certify that, on this 6th day of July, 1999, I served a copy of the foregoing "Motion for Extension of Time" via First Class mail, postage prepaid to the parties listed on the attached service list.

  
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